STATE OF MICHIGAN

COURT OF APPEALS

In re F.G., Minor.

F.G., a Minor,

Petitioner-Appellant,

v

WASHTENAW COUNTY CIRCUIT COURT,

Respondent-Appellee.

FOR PUBLICATION
November 23, 2004
9:05 a.m.

No. 249039
Washtenaw Circuit Court
LC No. 00-000658-AV

Official Reported Version

Before: Cooper, P.J., and Fitzgerald and Hoekstra, JJ.

COOPER, P. J. (*dissenting*).

I must dissent from the majority opinion of my colleagues as I would affirm the circuit court's order upholding the probate court's denial of petitioner's request to review her closed file relating to judicial bypass proceedings in which she participated as a minor pursuant to the Parental Rights Restoration Act (PRRA).[1]

I agree with the majority's determination that the trial court should have reviewed the probate court's determination de novo. I also agree with the majority's definition of "good cause" to open a closed file pursuant to MCR 3.615(B)(3). However, I do not agree that petitioner actually made the required showing of good cause to open the probate court file.

Petitioner erroneously argues that the *sole* purpose of MCR 3.615(B) is to protect the confidentiality of a minor seeking to obtain a waiver of parental consent for an abortion. According to her argument, the state can have no interest beyond protecting this confidentiality, and petitioners seeking to open their records should always be granted that right.

I do not agree that the sole purpose of the court rule is to protect the minor's confidentiality or that a court should apply a more permissive standard when determining if a person has shown good cause to open her own file. The state has expressed its interest in

[1] MCL 722.901 *et seq*.

limiting access to court records involving juveniles in other circumstances without such restriction. For instance, adoption records are sealed and may only be opened and information released if the biological parent enters his or her consent on the record.[2] Even though the sole purpose of that statute would appear to be the protection of the anonymity of biological parents, the state has stated its interest in "'fostering an orderly and supervised system of adoptions . . . closely tied to [the] interests of the parties involved.'"[3]

In relation to juvenile delinquency adjudications, if a juvenile is diverted into a private counseling or intervention agency pursuant to the Juvenile Diversion Act,[4] the record is sealed and "shall be open only by order of the court to persons having a legitimate interest"[5] or to "a law enforcement agency or court intake worker for only [sic] the purpose of deciding whether to divert a minor."[6] Although records in juvenile delinquency adjudications are open to the public,[7] even those records contain confidential files accessible only to those with a legitimate interest.[8] These actions protect the confidentiality of minors and prevent the handicap that such a stigma carries;[9] however, these actions affect more than the individual. They also enhance the public good by promoting rehabilitation and the reintegration of former juvenile delinquents into society.[10] It is clear that the state has many reasons for maintaining the confidentiality in proceedings involving juveniles beyond protecting the juvenile's right to privacy.

Furthermore, the Legislature could and has specifically indicated whether a closed or nonpublic record is to be made available to the juvenile without a showing of cause. When a juvenile who has reached the age of majority successfully petitions the court to set aside a juvenile adjudication, a copy of the nonpublic record is automatically given to the petitioner.[11] If the Legislature intended to allow a person unlimited access to her records from a judicial bypass proceeding, the Legislature would have included this information in the PRRA.[12]

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[2] MCL 710.27a.

[3] *In re Dixon*, 116 Mich App 763, 769; 323 NW2d 549 (1982), quoting *In re Linda F M v Dep't of Health of New York*, 52 NY2d 236, 239; 437 NYS2d 283; 418 NE2d 1302 (1981) (some alteration in *Dixon*).

[4] MCL 722.821 *et seq.*

[5] MCL 722.828(1).

[6] MCL 722.828(2).

[7] MCR 3.925(D)(1).

[8] MCR 3.925(D)(2).

[9] *People v Smith*, 437 Mich 293, 301; 470 NW2d 70 (1991).

[10] See *id.* at 303-304.

[11] MCL 712A.18e(14).

[12] See *AFSCME v Detroit*, 468 Mich 388, 400; 662 NW2d 695 (2003) (the courts must derive the Legislature's intent from the language of the statute and not from missing language).

Accordingly, I would find that petitioner, like any other interested party, must show a legally sufficient or substantial reason to open her file. Petitioner seeks to open her file to determine whether she voluntarily sought the waiver of parental consent, whether she voluntarily consented to an abortion, whether any of her rights were violated, and whether she had any causes of action arising from the proceedings. However, regret and twenty-twenty hindsight do not amount to good cause to open a closed file under the PRRA. The requested abortion was performed several years ago and there is no remedy petitioner can hope to gain. Therefore, I would find that petitioner's proffered reasons for seeking to open her file are not legally sufficient or substantial and the probate and circuit courts properly denied her request.

/s/ Jessica R. Cooper